

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

ARTHUR MINOR, et. al.,

Plaintiff,

v.

PRO-COMM COMMUNICATIONS, INC.

Defendant.

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Case No.: 3:04 cv 627 DRH

ORDER

On May 26, 2005, Plaintiff's attorney, Matthew B. Leppert informed this Court of a discovery dispute between the parties. At that time the Court set a telephonic discovery dispute conference pursuant to standing order of the Court. The telephonic conference was scheduled for May 31, 2005 at 11:00 a.m.

On May 31, 2005, a telephonic conference was held. Matthew B. Leppert and Rhona S. Lyons appeared for the plaintiffs and Bill Niehoff appeared for the defendant. The defendant requested that the hearing be continued until June 1, 2005, so that defendant's counsel, Kevin Stine could participate. The Court continued the telephonic conference until June 1, 2005 at 1:30 p.m.

On June 1, 2005, a telephonic conference was held regarding the discovery dispute. Plaintiffs appeared through Matthew B. Leppert and the defendant appeared through its attorney, Kevin Stine. At that telephonic conference defendant was ordered to produce all relevant discovery by June 10, 2005. It was further ordered that should defendant not produce all relevant discovery by said date, that a show cause hearing would be held on June 13, 2005 at 8:30 a.m. At that show cause hearing the plaintiff, the defendant, and the defendant's attorney

were all ordered to appear in person and defendant was further ordered to show cause why sanctions should not apply for failure to comply with this Court's order.

At 8:45 a.m. on June 13, 2005, the above styled case was called for the show cause hearing. The plaintiffs appeared through Matthew B. Leppert. Neither defendant nor defendant's counsel appeared. The court heard a proffer from Mr. Leppert that defendant had not complied with the Court's Order of June 1, 2005 regarding the aforementioned discovery dispute.

Federal Rule of Civil Procedure 37(b) sets down sanctions for failure to comply with a court's order. Pursuant to Federal Rule of Civil Procedure 37(b)(2) the defendant is hereby **ORDERED** to pay the plaintiff's reasonable expenses in preparing for and attending the show cause hearing of June 13, 2005. Plaintiff is **ORDERED** to submit a bill of costs for reasonable expenses in preparing for and attending the show cause hearing to the Court by **June 24, 2005**. **FURTHER**, defendant is ordered to **SHOW CAUSE** in writing to the Court by **June 24, 2005** why further sanctions, including but not limited to, ordering designated facts as established pursuant to Federal Rule of Civil Procedure 37(b)(2)(A), should not be imposed.

DATED: June 13, 2005

s/ Donald G. Wilkerson
DONALD G. WILKERSON
United States Magistrate Judge